

III. Remarks and Conclusions

As a general matter, the Examiner has objected to the use of the term "construct" in the Claims. Applicants traverse that requirement for a variety of reasons.

The embodiment of the invention as listed in the abstract is not listed as two separate subject matters: "equine infectious anemia (EIA) vaccine and/or construct" is a single entity, as "vaccine and/or construct" details the terminology that the invention can be referred to as either a vaccine or construct. When discussing inactivation of either live virus, attenuated virus, purified virus particles or whole virus particles, the 4 terms (live virus, attenuated virus, purified virus particles or whole virus particles) are different references to states of the current vaccine: it is both "live" and "attenuated"; when produced in tissue culture it is a "whole virus particle" which could be purified from the tissue culture supernatant and would then be "purified virus particle."

The term "construct" was used in this application in its simplest form as Merriam-Webster defines, "something produced by human effort". The definition of construct cited by the examiner is very limited and not recognized by the majority of reference materials. Due to the fact that Applicant describes and discusses both the vaccine and the DNA used to generate the vaccine construct, our use of the "term" construct is intended as the well-accepted general use as defined above. Therefore when referring to a proviral construct, it is a proviral entity produced by human effort. When referring to a vaccine construct, it is a vaccine entity produced by human effort.

As for "transfection," the accepted definition of "transfection" by the majority of those skilled in the art as well as Merriam-Webster is "the incorporation of exogenous DNA into a

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cell.” One skilled in the art does not usually refer to the transfer of DNA into a cell as an infection. The well recognized definition was the intended use of the word and therefore Applicant refers to μg of DNA when discussing transfections. Likewise, Applicant uses the terminology of measuring a virus titer (MOI) when referring to a virus.

The disclosure of the specification on page 42 is confusing as originally written and has been amended to recite “vaccine construct” instead of “proviral construct.

Embodiments of vaccines of the present invention are not a DNA vaccines, but are virus vaccines. Therefore, references to inactivating the vaccine and/or measuring it using MOI are used correctly.


The terms cited, “mutated ELAV construct vs proviral construct,” “transfection vs. infection,” and “DNA concentration vs. virus titer or multiplicity of infection (MOI),” are used correctly considering the definitions of construct and transfection, as well as the amended lines of the application cited above.

The use of the term construct as defined above is appropriate when referring to the ELAV virus which Applicant generated as a vaccine. Applicant could not use the term infection instead of transfection to describe the process of generating the mutated virus because this would be technically incorrect: applicant “transfect” DNA to generate a mutated virus which Applicant can then use to “infect” cells or animals.

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In conclusion, Applicant has corrected the specification as needed. The terms used are being used correctly. Applicant asserts the Claims are in a condition for allowance and respectfully requests such action. Please charge any required fee and credit any credits to deposit account 02-2334.

Respectfully submitted,


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